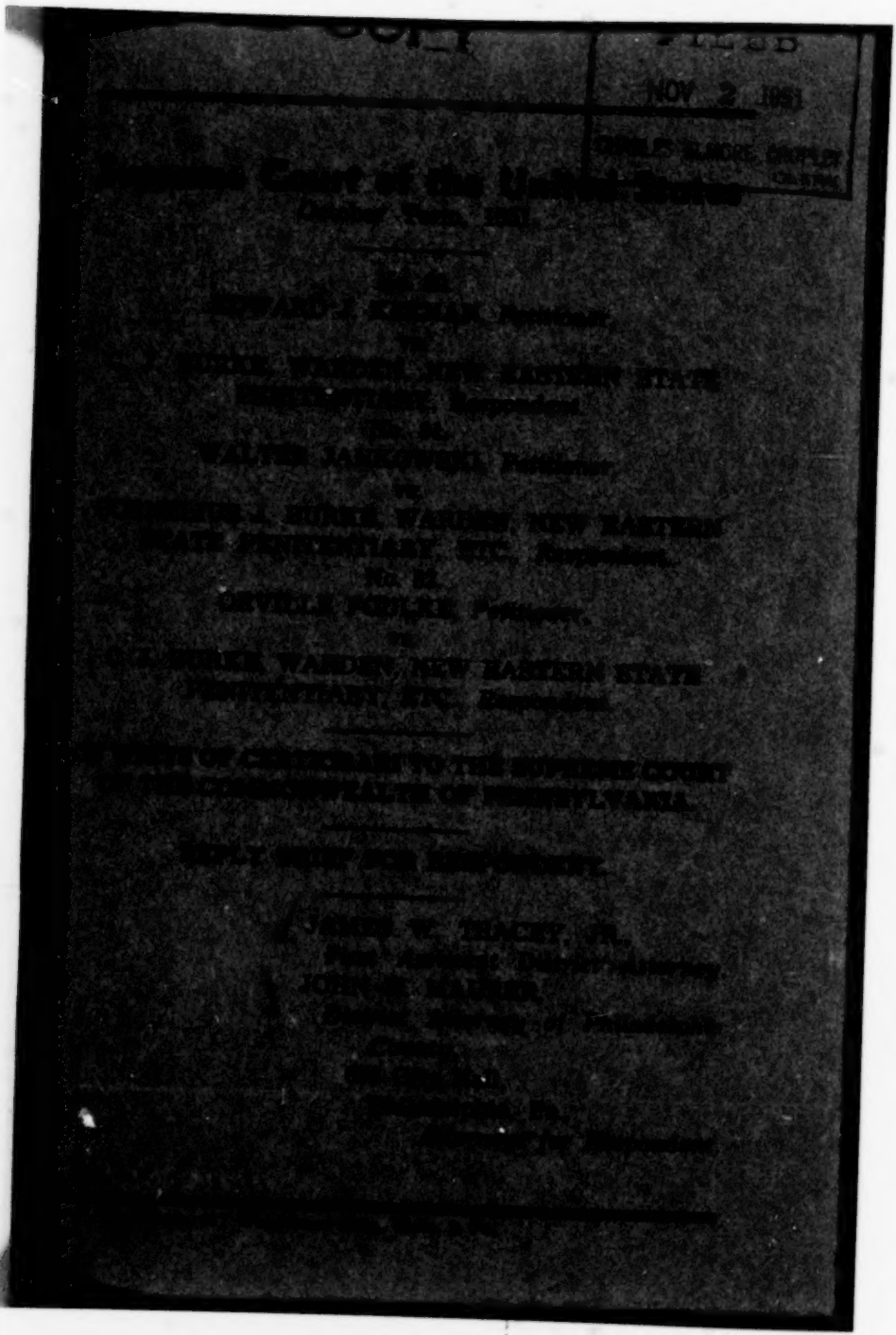

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SUPREME COURT OF THE UNITED STATES.
October Term, 1951.

No. 80.
EDWARD J. KEENAN, *Petitioner*,

vs.

C. J. BURKE, WARDEN, NEW EASTERN STATE PENITENTIARY, *Respondent*.

No. 81.
WALTER JANKOWSKI, *Petitioner*,

vs.

CORNELIUS J. BURKE, WARDEN, NEW EASTERN STATE PENITENTIARY, ETC., *Respondent*.

No. 82.
ORVILLE FOULKE, *Petitioner*,

vs.

C. J. BURKE, WARDEN, NEW EASTERN STATE PENITENTIARY, ETC., *Respondent*.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

REPLY BRIEF FOR RESPONDENT.

RESPONDENT'S STATEMENT OF THE CASE.

Two of the petitioners, Keenan and Jankowski, and two other defendants, Cain and Kopitsko, were arrested and voluntarily made and signed joint confession on May 18, 1945 in which it is stated others were involved in the crimes committed by them, but they refused to give the names of the other persons. A fifth defendant, Orville Foulke, one of the petitioners, was arrested and voluntarily made and signed a confession May 21, 1945, naming Frank Townsend as one of those involved.

Townsend was arrested June 3, 1945 and voluntarily made and signed a confession dated June 4, 1945.

On June 5, 1945, all six defendants were arraigned. Pleas of guilty were made to two (2) robbery indictments and two (2) burglary indictments, and not guilty to one (1) robbery indictment, one (1) burglary indictment and one indictment charging unlawfully carrying concealed revolver and without a license. Three places were buglarized, and robbery or attempted robbery was committed in each at the point of gun or guns. All defendants had prior criminal records.

Counsel was not requested and none assigned since it is only required in cases of murder.

Com. ex rel McGlinn v. Smith, 344 Pa. 41;
Com. ex rel. Shaw v. Smith, 147 Pa. Super. Ct. 423.

The Court sentenced the petitioners after the facts of the two burglary and robbery charges were told and the records of each examined.

The sentence for burglary is a fine not exceeding $10,000.00, and for an indeterminate sentence, not exceeding 10 to 20 years. Act of June 24, 1939, P. L. 872, Sec. 901—18 P. S. 4901.

The sentence for robbery, as described in the indictments, is a fine not exceeding $10,000.00, and for an indeterminate sentence, not exceeding 10 to 20 years. Act of June 24, 1939, P. L. 872, Sec. 705—18 P. S. 4705.

Under these four (4) indictments the defendants could have been sentenced to two (2) fines not exceeding $10,000.00 each, and two (2) indeterminate sentences, not exceeding 10 to 20 years each. One (1) sentence *only* may be imposed for each burglary-robbery.

There is an appendix attached hereto of the following:

A. Confession of Townsend.

B. Confession of Foulke.

C. Joint Confession of Keenan, Cain, Kopitsko and Jankowski.

These papers were not introduced in evidence because of the pleas of guilty.

D. Copy of affidavit of Detective Patrick J. Lane, denying that Edward J. Keenan was subjected to brutal treatment.

The three petitioners, Keenan, Jankowski and Foulke, were sentenced to terms of imprisonment as follows:

Keenan—not less than ten (10) nor more than twenty (20) years.

Jankowski—not less than seven and a half (7½) nor more than fifteen (15) years.

Foulke—not less than seven and a half (7½) nor more than fifteen (15) years.

SUMMARY OF ARGUMENT.

I.

Indictments, confessions and pleas.

The petitioner, Keenan, with three others (Kopitsko, Cain and Townsend) was indicted for armed robbery of Wade Mitchell (R. 25) at 1018 Passyunk Avenue, Philadelphia, Pa., to which crime he confessed and pleaded guilty.

The petitioners, Keenan, Jankowski and Foulke, together with two others (Kopitsko and Townsend) were indicted for attempted armed robbery (R. 33) of Velma Mobley, and with burglary (R. 37) at 323 South 23rd Street, Philadelphia, Pa., where Velma Mobley was in charge, to which offenses they pleaded guilty.

II.

Keenan at the time of the commission of the crimes hereinabove set forth was 25 years old; Jankowski was 24 years old and Foulke was 30 years old.

III.

Due process of law.

There is no categorical right to counsel under the 14th Amendment to the Constitution of the United States, the Constitution of the Commonwealth of Pennsylvania or Laws of Pennsylvania, except in murder.

A defendant, who pleads guilty, does not have to be supplied counsel.

To obtain a confession is lawful.

The indictments were understood by the petitioners.

The petitions for habeas corpus, prepared and filed by the petitioners show intelligence, resourcefulness and cunning.

ARGUMENT.

I.

Indictments, confessions and pleas.

One of the indictments to which the petitioners pleaded guilty and upon which they were sentenced was drawn under the Act of June 24, 1939, P. L. 872, Sec. 705—18 P. S. 4705.

> "Whoever, being armed with an offensive weapon or instrument, robs or assaults with intent to rob another; or, together with one or more person or persons, robs or assaults with intent to rob; or robs any person, and at the same time, or immediately before or immediately after such robbery, beats, strikes, or ill-uses any person, or does violence to such person, is guilty of felony, and upon conviction, shall be sentenced to pay a fine not exceeding ten thousand dollars ($10,000.00), or undergo imprisonment, by separate or solitary confinement at labor, not exceeding twenty (20) years, or both."

They were also indicted under Sec. 901, 18 P. S. 4901:

> "Whoever, at any time, wilfully and maliciously, enters any building, with intent to commit any felony therein, is guilty of burglary, a felony, and upon conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand dollars ($10,000.00), or to undergo imprisonment, by separate or solitary confinement at labor, not exceeding twenty (20) years, or both."

and Sec. 628 C, 18 P. S. 4628C:

> "In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of his intention to commit said crime of violence."

Indictment No. 696 of May Sessions 1945, charges the petitioner, Edward Keenan, with five counts drawn under Section 705, and the sixth count under Sec. 628; and Joseph Kopitsko, Charles Cain and Frank Townsend were also indicted on this bill on the same counts.

Indictment No. 697 of May Sessions, 1945, charges the petitioner, Edward Keenan, and Orville Foulke with four counts drawn under Sec. 705, and the fifth count under Sec. 628. Frank Townsend was also indicted on this bill of indictment on the same counts.

Indictment No. 698 of May Sessions, 1945, charges the petitioners Edward Keenan, Orville Foulke and Walter Jankowski with four counts drawn under Sec. 705 and last count under Sec. 628. Joseph Kopitski, and Frank Townsend were also indicted on this bill of indictment on the same counts.

Indictment No. 699 of May Sessions, 1945, charges the petitioners, Edward Keenan, Walter Jankowski and Orville

Foulke, with one count under Sec. 901. Joseph Kopitsko and Frank Townsend were also indicted on this bill of indictment on the same count.

Indictment No. 700 of May Sessions, 1945, charges the petitioners, Edward Keenan, and Orville Foulke with one count under Sec. 901. Frank Townsend was also indicted on this bill on same count.

Indictment No. 701 of May Sessions, 1945, charges the petitioner, Edward Keenan, with one count under Sec. 901. Frank Townsend, Joseph Kopitsko and Charles Cain were also indicted on this bill on the same count.

The defendants as charged, pleaded guilty to indictments Nos. 696, 698, 699 and 701.

Indictments Nos. 696 and 701 covered the robbery of Wade Mitchell and the entering of premises 1018 Passyunk Avenue, Philadelphia, Pa.

Indictments Nos. 698 and 699 covered the attempted robbery of Velma Mobley and the entering of the office of the Yellow Cab Company of 323 South 23rd Street, Philadelphia, Pa.

The confessions of the petitioners, Keenan and Jankowski relate to the burglary and attempted robbery at 1018 Passyunk Avenue and the Yellow Cab Company at 323 So. 23rd Street.

The confession of Foulke relates to the attempted robbery of the Yellow Cab Company's Office at 323 South 23rd Street.

II.

Who are the defendants?

The six defendants hereinabove referred to, all have criminal records, some of them having been involved in many criminal activities. From the prior experiences

which they had had in court, they undoubtedly knew enough of the legal procedure to know that they had the right to ask for counsel.

III.

Due process of law.

Article 1, Section 9 of the Constitution of Pennsylvania provides:

> "Rights of accused in criminal prosecutions.
> "In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, * * *"

Article VI of the Amendments of the Constitution of the United States provides:

> "Rights of accused persons in criminal prosecutions.
> "In all criminal prosecutions, the accused * * * shall have * * * the Assistance of Counsel for his defence."

Article XIV of the Amendments of the Constitution of the United States provides:

"Section 1. Citizenship defined. Privileges of citizens.

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *"

Article VI of the Amendments to the Constitution of the United States applies only to trials in federal courts. *Betts v. Brady*, 316 U. S. 455, 461.

That the "Accused should have a right to be heard by himself and by his counsel was adopted by Pa. in 1776 * * *" *Betts v. Brady*, supra, 465.

In most states the people, their representative and courts, do not consider the appointment of counsel a fundamental right essential to a fair trial. *Betts v. Brady*, supra, 471.

In Pennsylvania, by Act of Legislature, in murder cases —the only instance carrying the death penalty—counsel must be appointed.

Act of March 22, 1907, P. L. 31—19 P. S. 784.

In crimes other than murder, accused has a right to be heard by counsel, but it has never been the law that he must be supplied with counsel.

Commonwealth ex rel. McGlinn v. Smith, 344 Pa. 41.

McGlinn pleaded not guilty to charge of armed robbery.

Affirmed Commonwealth ex rel. Withers v. Ashe, 350 Pa. 493, 495;
Commonwealth ex rel. Fitts v. Smith, 158 Pa. Super. 105.

It has been constantly held that when a defendant pleads guilty the court is not bound to appoint counsel to represent him.

Com. ex rel. Curtis v. Ashe, 139 Pa. Super. 417;
Com. ex rel. Cook v. Ashe, 144 Pa. Super. 1;
Com. ex rel. Billings v. Ashe, 144 Pa. Super. 209, 211;
Com. ex rel. Shaw v. Smith, 147 Pa. Super. 423.

Each relator, in the cited cases, in his petition for discharge on habeas corpus, gave most of the following reasons as taken from these cases.

1. Did not have counsel.

2. Was not represented by counsel.

3. Was not informed of his right to counsel.

4. Trial judge did not ask if he wished counsel.

5. Did not waive his constitutional right to be represented by counsel.

The petitioners assigned as their reasons for the granting of Writs of Habeas Corpus that they were tried without due process of law in that counsel was not assigned to them; they were held incommunicado for an undue length of time; the incorrect reading of the criminal records by the Court; the facetious remarks of the Court, and because they were not properly instructed with respect to the offenses with which they were charged.

Simply because without counsel, the defendant pleads guilty—is no reason to set aside the sentence. If this were so the courts would spend most of their time granting new trials. There must be a real reason.

Commonwealth ex rel. Shaw v. Smith, 147 Pa. Super. 423.

Shaw pleaded guilty; after sentence he filed a petition for habeas corpus alleging the following reasons:

1. Did not have counsel.

2. Was not informed of his right to counsel.

3. Trial judge did not ask if he wished counsel nor offered to appoint counsel.

4. Did not waive his constitutional right to be represented by counsel.

The Court in its decision said, p. 430:

> "Our courts should not for the reasons offered in this petition turn loose upon society the hundreds of convicts who were sent to prison after *pleading guilty* or being adjudged guilty by a jury, unless the law imperatively requires them to do so, and there is no such requirement."

The question presented by the petitioners for the Court's consideration is clearly stated as follows:

> "Whether the carelessness and facetiousness of the trial court in conducting the proceedings in which petitioners were sentenced to long terms of imprisonment in the absence of counsel rendered the hearing so apt to result in injustice as to be fundamentally unfair."

The assertion that there was "carelessness" and "facetiousness" on the part of the trial court in the conduct of the proceedings should have careful consideration and impartial analysis.

In the first place, the cards (known as "Criminal Record Cards") have recorded on them all of the known arrests of each of the defendants who had entered pleas of guilty to the charges against them, supra. The card has recorded on it certain facts with respect to the defendant therein named, such as his age, place of residence, photograph number (if a photograph has been taken), and in addition there is also noted on the card the final disposition of each charge against him i. e. held for court; discharged by magistrate; verdict not guilty or verdict guilty, and in the latter case the sentence imposed thereon is also noted. The card also shows whether a Nolle Prosequi has been entered and a notation with respect to any other persons arrested with the defendant in question.

The Court reading the card knows at a glance what dis-

position has been made of the criminal charges noted thereon. The mere fact that the Court fails to say when reading the card that the person named therein was discharged by the magistrate or found not guilty by a jury is certainly no reason to charge the Court with carelessness. He knows from reading the card the disposition of the charge, and it is certainly projecting one's self into the unknown to say that the sentencing court was careless. Let us assume that the Court, instead of reading the card aloud, had read it without uttering what was recorded thereon. Could it then be said that he was careless in his reading of it? It is only because he read it aloud that it became a part of the record of the proceedings.

While the remark of the Court with respect to the saxophone, which the defendant Townsend was charged with stealing, was not in keeping with proper judicial deportment, it is rather difficult to understand how such a remark could be construed to be so hostile to the rights of a known criminal thug, who had, at the time the remark was made, pleaded guilty to robbery, being armed with an offensive weapon; attempted robbery, being armed with offensive weapon and two charges of burglary.

But, even if we assume, arguendo only, that the alleged careless reading of Townsend's criminal record and the remark about the saxophone were prejudicial to Townsend (three justices of this Court dissented from the majority opinion), by what stretch of the imagination can it be said that the three petitioners here were prejudiced thereby or that the proceeding as to them was lacking in due process of law.

It is alleged, page 5 of petitioners' brief that at the time the petitioner Keenan was sentenced, the Court stated that in the year 1930 he had been arrested charged with larceny of an automobile. A casual glance at Keenan's criminal record (R. 24) conclusively shows that he was first arrested June 24, 1937, and that the stenographic record,

which shows that the judge stated he was arrested in the year 1930, unquestionably was an error on the part of the court reporter.

It is further contended that the Court's remark when sentencing Keenan,

> "Well, if you want to be gunmen, you better get out of Philadelphia. This isn't very happy hunting ground for you"

was a sneering remark and prejudicial to Keenan. Whether or not it was an "exhibition of overzealous local civic pride" as stated in the opinion of the Pennsylvania Supreme Court (R. 77) it certainly taxes one's credulity to believe it did Keenan any harm.

It is rather significant to note that the petitioner Keenan is the only one of the four defendants, who have filed petitions in the United States Supreme Court for Writs of Certiorari, who states he was subject to brutal treatment at the hands of the police who made the arrests. Not one of the other three who have petitioned this Court, to wit: Townsend, Foulke and Jankowski, have in any way intimated that they were subjected to brutal treatment at the hands of the public authorities. All we have with respect to this alleged brutal treatment is the unsupported word of Keenan. As hereinbefore stated there is attached (Appendix D) an affidavit of Detective Patrick J. Lane who denies that Keenan was in any way brutally treated while in custody of the police and detectives.

Counsel for the petitioner Keenan contends that that part of the opinion of the Supreme Court of Pennsylvania wherein it is stated, page 12 of brief, "the reference to indictment No. 300 is the only item attacked by him (Keenan) is mistaken on two counts."

1st—with respect to the 1930 charge of larceny of an automobile, which has been discussed, supra.

2nd—the charge of suspicion of larceny of a Yellow Cab which it is asserted was read "without mention of its dismissal."

The criminal record card of Keenan shows that the magistrate before whom Keenan had a hearing on this charge on December 3, 1937, returned or sent the matter to the Municipal Court. Of course the charge of "suspicion of larceny" is not an indictable offense under the law of Pennsylvania, and Keenan at that time being under the age of eighteen years, the magistrate evidently felt Keenan's case should be brought to the attention of the Juvenile Branch of the Municipal Court. The trial judge was not in a position to say that the charge was dismissed because there is nothing noted on the card that it was.

A search of the records of the Municipal Court, however, reveals that on December 9, 1937, Keenan was discharged by President Judge Brown of that Court.

The Commonwealth of Pennsylvania contends that the Supreme Court of Pennsylvania very properly disposed of the claims of the petitioners when it stated (R. 77):

> "It did not seem to us that the petitioners alleged a case within the purview of Townsend v. Burke, supra, or that (fol. 15) they are within its contemplation from the mere fact that they were in court at the same time that the judge lost his jurisdiction over Townsend."

It is respectfully urged that this Court, when considering the contentions of the petitioners and of the respondent, keep in mind the opinion of Mr. Justice Cardozo in the case of *Snyder vs. Massachusetts*, 291 U. S. 97, where he said, inter alia, that the test is whether or not the thing complained of "is so flagrantly unjust that the Constitution of the United States steps in to forbid it." And, again in the same opinion, "There is danger that the criminal law will be brought into contempt * * * if gossamer possibilities of prejudice to a defendant are to nullify a sentence pro-

nounced by a court of competent jurisdiction in obedience to local law. * * *"

It is therefore respectfully submitted that the judgment of the Supreme Court of Pennsylvania should be affirmed.

JAMES W. TRACEY, JR.,
First Assistant District Attorney,
JOHN H. MAURER,
District Attorney,
Attorneys for Respondent.

APPENDIX "A".

DEPARTMENT OF PUBLIC SAFETY.
BUREAU OF POLICE
PHILA., PA.

FIRST DETECTIVE DIVISION
15th and Snyder Avenue.

Mon. June 4, 1945 3 P. M.

STATEMENT OF: FRANK SULLIVAN TOWNSEND, W-29 ("Frank")
1732 Wylie Street, Philadelphia, Pa.

Concerning: Crimes mentioned in this statement.

Record: Statement taken at the 1st Detective Division headquarters, 15th St. and Snyder Ave., on Monday, June 4, 1945, at 3 p. m.
Stenographer, Robert Prado, clerk of the 1st Det. Div.

Taken in presence of: Detectives, 1st Detective Division.
1. Hicks #142, E. J.
2. Kelly #198, J. A.
3. Lear #13, L. J.

Interrogation by: Detective Patrick J. Lane, #83, 1st Det. Div.

Appendix "A"

BY DETECTIVE LANE #83:

Q. What is your name, age, and address?

A. Frank Sullivan Townsend. They call me "Frank." I'm twenty-nine. I live at 1732 Wylie Street.

Q. "Frank," we're going to take a statement from you, which you understand, you are making of your own free will. No threats or promises are being made to you to get you to make this statement; and you are being warned that anything you say concerning you yourself in this statement may be used as evidence against you at the time of your trial in court. Do you understand that, and are you willing to make a statement.

A. Yes, sir.

Q. On March 18, 1945, between one and six o'clock in the morning, a taproom at 5019 North Broad St. owned by a Eugene Mahlmeister, was broken into. Do you know anything about that.

A. Yes. Well the three of us went in there: me, "Klik" —Joseph Kopitsko—, and Eddie Keenan. We broke a window and entered the place. We got there on the subway and got off at Logan Station. We pulled down the top window, which wasn't locked. And we opened the side door. We looked around and went in the office and saw a safe. We figured all the money was in there. We didn't touch nothing, but went out and closed the door and the window and got a car and took the safe out to a lot at 24th and Fairmount and took the screws out of the safe. We got $1150 cash. We also got three revolvers out of the place. I have one. And the other two I threw in the Schuylkill River, at the Dam, Spring Garden Bridge.

FIRST DETECTIVE DIVISION
15th St. and Snyder Ave.
Phila., Pa.

STATEMENT OF FRANK S. TOWNSEND, 6-4-45, 3 P. M.

Q. Did you take anything else there.

A. And about four cartons of cigarettes and two cases of whiskey, assorted brands. Also three Coast Guard shirts. I'm now wearing one of them.

Q. Now, on the night of March 23, 1945, there was a truck loaded with welding equipment that was stolen from a garage, 1627 Brandywine Street. What do you know about that.

A. The first I seen that truck was down at the garage, 1018 Passyunk Avenue. We had planned to meet. I met Kopitsko and Keenan and Cain. I stayed outside. The others went inside the garage. They pulled the truck inside the big doors and closed the big doors. Then I took the burning equipment off the truck. I was going to burn the safe. But I couldn't make the equipment work. Then I knocked the combination off the safe. When I seen that I couldn't make use of the burning equipment, and we saw there was no use hanging around there, we picked a car out of the garage and went out the Eighth Street side of the building. And we later abandoned it on Ninth Street, around Lombard.

Q. On April 29, 1945, around 11.45 p. m. the Yellow Cab Co. office and garage, 323 S. 23rd St. was held up at a point of gun. Do you know anything about that.

A. Yes. I was there. On that job there was me, and Keenan, and Kopitsko, and "Wash"—Jankowski, and Reds. We went down to the garage on a trolley. Me and Reds and Jankowski waited in the square, 23rd and Pine, for Kopitsko

and Keenan, who went down and got an automobile from a public garage, 6th and Reed. Then I got in the car with the rest of them and drove into the garage. There was a colored girl in the office, and there was a colored mechanic, and one cab driver. We got them all together and put them in the office. We saw what looked like a wooden box and we tried to break it open, but we found out it was an iron safe. We gave up, and didn't get anything out of there.

Q. Are there any other jobs you were on that you want to tell us about at this time.

A. That's all. I was on a job at 24th and Fairmount, for which I have been indicted.

Q. Is what you have said in this statement, the truth.

A. Yes, sir.

(SIGNED) Frank Townsend
1732 Wylie Street

WITNESS
(SIGNED) Patrick J. Lane #83.

APPENDIX "B".

DEPARTMENT OF PUBLIC SAFETY.
BUREAU OF POLICE.
Philadelphia.

Detective Division.
15th & Snyder Ave.

May 21, 1945, 5 P. M.

STATEMENT OF: ORVILLE FOULKE (nickname "Reds") White, 30, residence 2222 Aspen St., Phila., Pa.

Concerning: Crimes mentioned in this statement.

Record: Statement taken at the 1st Detective Division headquarters, 15th St. and Snyder Ave., Phila., Pa. on Monday, May 21, 1945, at 5 p. m. Stenographer, Robert Prado, clerk of the 1st Detective Division.

Taken in the presence of: Detectives Louis J. Lear #13, Edward J. Hicks, #140; James A. Kelly, #198, of the First Detective Division.

Interrogation by: Detective Patrick J. Lane, #83, 1st Detective Division.

BY DETECTIVE LANE #83:

Q. What is your name, age, and address?

A. Orville Foulke. They call me "Reds." I'm thirty. I live at 2222 Aspen Street.

Q. "Reds," we're going to take a statement from you, which you are making of your own free will. No threats or promises are being made to you to get you to make this statement; and you are being warned that anything you say in this statement concerning you yourself, may be used as evidence against you at the time of your trial in court. Do you understand that, and if so, are you willing to make a statement?

A. Yes, sir.

FIRST DETECTIVE DIVISION
15th St. and Snyder Ave.
Philadelphia, Pa.

STATEMENT OF ORVILLE FOULKE, 5-21-45, 5 p. m.

Q. Now, on April 29, 1945, about 11.45 P. M. the Yellow Cab Company office and garage located at 323 S. 23rd St.,

was held up at the point of gun and attempted safe robbery was made. What do you know about that job?

A. Only that I was on it.

Q. Who else was with you on that job.

A. There was a few guys with me. I was half drunked up. There was five of us; me, Jankowski, Popitsko, Keenan, and Townsend. I was standing at the door at the office to keep the three people covered. I didn't have a revolver. I didn't have nothing.

Q. Where did you all meet before you went out to the Yellow Cab place?

A. The other four met me at the corner of 16th and Fairmount Avenue, in an automobile. We went from there to the Yellow Cab Garage, 23rd and Pine. When we got there. I was at the office to cover the three employees; that is, to watch them. They were in the office.

Q. I am showing you this picture (Misc. 7.049 5-18-45 Bur. Police Phila. Pa.) who are these men?

A. That's Jankowski, Kopitsko, Keenan, and Cain.

Q. Are they the four others?

A. Jankowski, Kopitsko, and Keenan are three of the four that were with me at the Yellow Cab place, 23rd and Pine. The other, Cain, wasn't. The fourth one on that was Townsend: Frankie.

Q. Well, did you get anything out of that Yellow Cab place?

A. No. And I just stood outside the door to watch the three employees. The others tried to open the safe, but couldn't. So we left in the same car that we came in.

Q. Now, on March 29, 1945, 11.10 p. m., there was a garage at the north-east corner of 27th and Brown where the attendant was held up at point of gun and an automobile stolen. Were you in on that?

A. Yes. Keenan and Townsend were with me.

Q. How many of you had revolvers?

A. All of us.

Q. Was the attendant robbed?

A. Most likely he was. I was outside the door and the other two came out with an automobile.

Q. Did you know that the attendant had been held up and robbed?

A. Not till after the other two came out.

Q. Is this all, and is what you've said here, the truth.

A. Yes, sir.

(SIGNED) Orville Foulke
(RES) 2222 Aspen St.

WITNESSES
(SIGNED) Patrick J. Lane #83.

APPENDIX "C".

DEPARTMENT OF PUBLIC SAFETY.
BUREAU OF POLICE
PHILA., PENNA.

FIRST DETECTIVE DIVISION
15th and Snyder Avenue

3.00 P. M., May 18, 1945 (Friday)

JOINT STATEMENT OF:
(1) EDWARD KEENAN, W-25, 1622 Carlton Street;
(2) CHARLES CAIN, W-24, 1732 Wylie Street;
(3) JOSEPH KOPITSKO, W-23, 311 Tasker Street;
(4) WALTER JANKOWSKI, W-25, 1607 Mt. Vernon St.

Concerning: (Crimes mentioned in this statement).

Record: Statement taken at the First Detective Division Headquarters, 15th St. and Snyder Ave., Phila., Pa., on Friday, May 18, 1945, at 3.00 P. M. Stenographer, Robert Prado, clerk of the First Detective Division.

Appendix "C"

Interrogation By: Detective Patrick J. Lane, No. 83, of the First Detective Division.

TAKEN IN THE PRESENCE OF:

1—Detective Edward J. Hicks, No. 142, 1st Det. Div.
2—Detective Louis J. Lear, No. 13, 1st Det. Div.
3—Detective James A. Kelly, No. 198, 1st Det. Div.

BY DETECTIVE LANE, No. 83:

Q. What are your names, ages, and residence addresses?
A. Edward Keenan, twenty-five, 1622 Carlton Street.
A. Charles Cain, twenty-four, 1732 Wylie Street.
A. Joseph Kopitsko, twenty-three, 311 Tasker Street.
A. Walter Jankowski, twenty-five, 1607 Mount Vernon Street.

Q. We're going to take a statement from you, which you are making of your own free will. No threats or promises are being made to you to get you to make this statement; and you are being warned that anything you say in this statement concerning you yourselves, may be used as evidence against you at the time of your trial in court. Do you understand that, and if so, are you willing to make a statement?

A. (by each) Yes.

FIRST DETECTIVE DIVISION
15th St. and Snyder Ave.,
Philadelphia, Pa.

JOINT STATEMENT OF EDWARD KEENAN, et al., 5-18-45—3.00 P. M.

Q. Now, one of you start it off. On March 18, 1945, between 1 A. M. and 6.00 A. M. a taproom was broken into

at 5019 North Broad Street, owned by one Eugene Mahlemeister, who resides at 1429 W. Cayuga Street, so we can start with that job.

A. (By Cain) I wasn't in on that job.

A. (By Keenan) Me and Joe Popitsko done that job.

Q. How did you get in there, and what did you do when you got in there?

A. (By Keenan) We—that is, me and Joe Popitsko—that night, took the subway at Broad and Fairmount Avenue and rode up to Logan Station and, with another fellow—I don't want to mention his name—we pulled the top of the window down. The bottom was locked. The top wasn't. We got in there and we looked around for money. So we found a little office where everything was at. So we took the safe out of the building. We left and I got a machine. I took it without the owner's permission. He's more or less a friend of mine. He didn't know I took it. So we came back and got the safe and took it down to the lot 24th and Fairmount. And we took the screws out of the back and opened the safe. We got about $1150 and that was in the safe, in cash. We also took out of there, two revolvers, and an antique revolver, which we threw away in the Schuylkill River. We also took some coast guard shirts—three of them.

Q. What did you do with the revolvers you got there?

A. (By Keenan) That's the ones we were using.

Q. Showing you this revolver.

Is this one that was stolen there?

A. (By Kopitsko) Yes.

Q. What became of the other revolvers?

A. (By Keenan) We threw the antique in the river, and the other one, I ain't got it.

Q. Did you take any liquor out of there?

A. (By Keenan) Three bottles, for our own use.

Q. You're sure you didn't take any more liquor than just those three bottles?

A. (By Keenan) That's right.

Q. On the night of March 23, there was an automobile stolen from a garage, 1627 Brandywine Street, owned by Morris Coyle. Who knows anything about that?

A. (By Kopitsko) I got the truck out.

Q. How did you get in there?

A. (By Kopitsko) Broke a panel in the large door.

Q. Who was with you on that job?

A. (Kopitsko) Nobody was with me when I got the truck. It contained commercial welding equipment. Well, there was another fellow with me, but I don't care to mention his name.

Q. Well, what did you do?

A. (By Kopitsko) We drove down with the truck to the garage on 6th Street (1018 E. Passyunk Ave., owned by Joseph Rizzo). That's all for me.

A. (By Keenan) Pre-arranged, I met Joe Kopitsko and Charlie.

A. (By Cain) We walked up to the door, Eddie Keenan and I. We both had guns. Eddie had one, and I had one. The door was locked. I knocked on the door. The colored fellow came to the door. We asked him could we use his toilet. We walked in and pulled the guns on him—the both of us. We marched him to the back of the garage and put him in a car. I stayed in the rear of the garage, watching him.

A. (By Keenan) Then I let them come in with the truck. The garage door was open. Then Joe Kopitsko drove the welding truck in. And I closed the door. Then the equipment we had was no good to us. We couldn't get the torch lit as the air valve locked. I was going to try to burn into the safe which was in the front office. So we found a small sledge there. We tried to drive a pin through but that wasn't no good, either. So we left.

Q. When you failed to enter the safe, what did you do then?

A. (By Keenan) So we got the Buick Sedan, 1941 model, 2 ton, black body, gray top, Pa. Lic. C-4757. We went out

on the 8th St. side of the garage. All of us got in the car Me and Charlie and Joe we went a couple of blocks, just far enough to get out of there. We parked it on 9th Street around Lombard Street. We left the colored man in the car.

Q. On April 29, 1945, 11.45 P. M. the Yellow Cab Office and garage located at 323 S. 23rd St. was held up at the point of gun, and attempt robbery of a safe there, was made. Who knows anything about that job?

A. (By Keenan) That's his, too (indicating Walter Jankowski). That was us three,—me, Joe Kopitsko, and Walter Jankowski. And some others, too. I don't want to mention their names. They were in on that, too. We met near the garage. That wasn't pre-arranged; it was a "beat up" affair; it came up just on the spur of the moment. We went to the garage, 6th and Reed. So we pushed a car out of there. We got into it and we shot into the Yellow Cab place. By the way, that a public garage, 6th and Reed. I was driving. I drove to the Yellow Cab Garage, 23rd and Pine. All of us drove in. There was a cab driver there. So we took over. Joe Kopitsko and Walter Jankowski had a gun. There was only one girl in the office, a colored girl. So we told them to all go in the office.

KOPITSKO: We told them to stand up against the wall. Something like that.

A. (Continued by Keenan) So me and Jankowski was in the back office. It looked like a wooden box. There's a big sledge there. I picked it up and hit the safe. But it didn't budge the safe. It's a safe with a wooden casing on it. I said "Fuck this, I'm going to see what it looks like on the other side." I walked around and seen that big old thing. And I said, "Come on, Frank, we're wasting our time." So that's all. We didn't break no combination or nothing.

Q. On the night of May 10, 1945, a taproom was broken into and burglarized at 1500 Callowhill Street. Who know anything about that?

A. (By Keenan) Me and Charlie Cain done that. My wife lives down that way I was going down that way. Me and Charlie had been drinking. We were drunk, so I stuck my foot through the window and reached in and turned the knob. So the other door was locked, too. I stuck my foot in, too. I got my foot cut. When I got near the bar, the burglar alarm went off. I grabbed four bottles of liquor. One had this much (indicating); the most had about this much (indicating). It was on the bar. So that's all we took.

Q. What about the job that was committed in Whitemarsh?

A. (By Keenan) We started out from 16th and Fairmount. Right around the corner there's a garage. That's on 16th Street, right off Fairmount Ave. We pushed a car out of there, and started out. I got in the car, and Charlie Cain, and somebody else. I don't want to mention the name. And we drove up to Whitemarsh. We entered through the back window. I guess we got about two cases of whiskey. That's all we took.

Q. Is there anything else you boys have to say, now?

A. (By each) No.

Q. Is everything you've said here, the truth?

A. (By each) Yes.

SIGNED Edw. J. Keenan
RES. 1622 Carlton Street
SIGNED Charles A. Cain
RES. 1732 Wylie Street
SIGNED Joseph Kopitsko
RES. 311 Tasker Street
SIGNED Walter Jankowski
RES. 1607 Mt. Vernon St.

WITNESSES:

Det. Edward J. Hicks, No. 142.
Det. Patrick J. Lane, No. 83.
Det. James A. Kelly, No. 198.
Det. Louis Lear, No. 13.

APPENDIX "D".

Commonwealth of Pennsylvania }
City and County of Philadelphia } ss.

PATRICK J. LANE, being duly sworn according to law, deposes and says that he is a detective in the employ of the Department of Public Safety of the City and County of Philadelphia, and that he was one of the arresting officers who took into custody Edward Keenan, said arrest having been made approximately at 9 o'clock P. M. on May 17, 1945; that after the arrest was made, Keenan was taken to the First Detective Division, 15th Street and Snyder Avenue, Philadelphia, where your deponent and his fellow detectives talked to Keenan for approximately one hour.

Deponent further avers that the said Keenan at a hearing at 4th and Snyder Avenue, Philadelphia, on May 19, 1945 before Magistrate Costello, one of the magistrates of the City of Philadelphia, was held without bail for a further hearing on May 24, 1945; that at said further hearing the said Keenan was held for Court; defendant was called for trial on June 1, 1945 in Room 453 City Hall at which time he pleaded guilty to a number of bills of indictment and was sentenced by his Honor, Judge Harry S. McDevitt to not less than ten years nor more than twenty years in Eastern State Penitentiary.

Deponent further avers that Keenan having been arrested at 9 P. M. May 17, 1945 was not given anything to eat until the following morning, May 18th, at which time he was furnished with breakfast.

Deponent further avers that no restriction was placed on Keenan with respect to smoking and that if Keenan had in his possession smoking tobacco of any variety or form he would have been permitted to smoke while he was in custody.

Appendix "D"

Deponent further avers that the said Keenan was not subjected to any brutal treatment, nor did anyone attempt to interfere with his sleeping during the time that he was in custody.

Deponent further avers that a statement was taken from Keenan on May 18, 1945 at about 3 o'clock P. M.

PATRICK J. LANE.

Sworn to and subscribed before me this 13th day of April, A. D. 1951.

NATHAN STUP,
Notary Public.

My commission expires January 27, 1953.

See Journal page 62, for Nos. 80,81 & 82.
Per Curiam: The Judgments are reversed.

SUPREME COURT OF THE UNITED STATES

Nos. 80, 81 AND 82.—OCTOBER TERM, 1951.

Edward J. Keenan, Petitioner, 80 *v.* C. J. Burke, Warden, New Eastern State Penitentiary.	On Writs of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.
Walter Jankowski, Petitioner, 81 *v.* C. J. Burke, Warden, New Eastern State Penitentiary.	
Orville Foulke, Petitioner, 82 *v.* C. J. Burke, Warden, New Eastern State Penitentiary.	

[November 26, 1951.]

Memorandum by MR. JUSTICE MINTON, dissenting.

These cases only illuminate the error of this Court in *Townsend* v. *Burke*, 334 U. S. 736. I would not compound the error. I would overrule *Townsend* rather than send these petitioners back to be proceeded against nicely. Their guilt is not questioned. They say, "If we had only had a lawyer, *maybe* we would not have received such long sentences." Yet, the sentencing judge gave two of the petitioners much shorter terms than the maximum provided by statute. They complain not so much of the sentences they received but the manner in which they received them.

Admit the sentencing judge was facetious, even that he bulldozed the petitioners—he sentenced them all within the limits authorized by law. Maybe the judge's con-